

CHAPTER 3: THE UNIT

The basic organization of the American Legion Auxiliary is the local unit. The unit is the grass-roots level of the organization. Units implement the mission of the department and national programs. All Auxiliary members must hold membership in a unit and in only one unit. There are no national memberships. A member may volunteer to help with activities in more than one unit such as is the case for someone who resides part of the year in two different states. However, the member can only have *membership* in one unit.

The unit is a not-for-profit veterans organization auxiliary allied to The American Legion, a Congressionally chartered non-profit veterans service organization. As stated in the ALA National Bylaws, the unit shall be given the name, location, and number of The American Legion post to which it is attached.

How to Organize a New Unit

Organization of an Auxiliary unit requires a group of at least 10 Senior members. Units must secure authorization for the formation of an Auxiliary unit from the post to which it would like to attach. The newly formed unit will need to be chartered by the national organization to be recognized as a unit in the American Legion Auxiliary. Charter application forms, individual membership applications, sample constitution and bylaws, and any other needed supplies or information may be obtained from your department headquarters.


The post commander and department Auxiliary officers should attend the organizational meeting to outline the nature and purposes of the Auxiliary. The following procedure is suggested protocol for the meeting:

- Elect a temporary chairman and secretary to preside over the meeting.
- Adopt a temporary unit constitution. (Please see the Appendix for an example of a unit constitution and bylaws)
- Establish dues amounts for both senior and junior members, enough to cover unit administrative

expenses plus assessment amounts due to national, department, and, on occasion, district, or county.

- The temporary chairman asks for nominations for officers.
- Following election, the newly elected officers will assume their duties.

Procedures for Obtaining a Unit Charter

 The Unit Charter Application is available online at the national website www.ALAforVeterans.org. Following are the steps to complete to apply for a charter as a new unit:

1. Print a copy of the charter application.
2. Fully complete the charter application.
3. Have the application signed by the post commander and attested by the post adjutant.
4. Collect all new member applications (both Junior members and Senior members) or transfer forms signed by the members transferring from another unit (and any dues they may owe for the current year).
NOTE: A minimum of 10 Senior members is required to form a unit. Junior members currently cannot be counted in the original 10 applicants for a unit charter but can be charter members.
5. Collect dues from the new members.
6. Send the following to your **department headquarters**:
 - a. the fully completed charter application;
 - b. all completed member applications or transfer forms;
 - c. department and national portion of dues for each member (don't send the unit portion!);
 - d. a completed form or letter indicating the unit's total annual dues amount for each Junior and each Senior member.

National Headquarters will process the application from the department and send the charter to the department. The department will then return the charter to the unit. National HQ will mail out new membership cards to the charter members.

eUnits

Electronic units (eUnits) allow members to conduct meetings via teleconferencing or online platforms. There is no difference in how an eUnit would charter or operate except for how they choose to meet. Starting an eUnit involves the same procedure for a traditional unit. Both traditional and eUnits should have provisions in their bylaws for meeting and voting electronically that are compliant with their state laws, which vary from state to state.


Some traditional brick-and-mortar American Legion Auxiliary units may choose to utilize an eUnit/hybrid meeting structure in which members sometimes meet in person and sometimes online. The in-person meetings are held in a physical location with some members choosing to video conference into the meeting. eUnits may meet by teleconferencing or phone conferencing. Examples of these formats are Zoom and Freeconferencecall.com, but many other options are available.

Charter Lost or Destroyed

If a charter has been lost or destroyed, a duplicate can be requested by the department secretary with the payment of the charter fee. Duplicate charter rolls can also be obtained by the same procedure.

Charter Cancellation

Should the unit decide to cancel its charter, a vote by the unit should be conducted at a meeting, with advance written notice to the membership. The Department Executive Committee (DEC) will vote on the cancellation and then submit a notification to National Headquarters for ratification by the National Executive Committee (NEC). Please check with your department to see what process they have in place.

 **NOTE:** Members belonging to a unit whose cancellation has been ratified by the NEC will automatically be transferred into their department headquarters unit.

According to the ALA National Bylaws, unit charters may be cancelled by the Department Executive Committee for good cause. Cancellation is in order when two or more units merge

or when a unit voluntarily ceases to function. If a unit's charter has been cancelled, the unit may appeal to the National Executive Committee following the process in ALA National Standing Rules.

Holding Membership Dues

Unit officers should submit dues in a timely manner and should not hold collected membership dues for an extended amount of time. Not submitting membership dues in a timely manner can have several consequences:

- members unnecessarily receive multiple renewal reminders, increasing costs incurred by National Headquarters;
- the potential for duplicate payments from members;
- frustration by members who have already renewed, have their card, but receive a renewal reminder;
- underreports membership for reports and awards.

Therefore, all member dues should be submitted to the department as soon as possible.

The national Standing Rules of the American Legion Auxiliary state "Units have the authority to establish annual Unit dues. Annual dues collected by the Unit shall include Department and National dues. Units shall remit Department and National dues according to the policies adopted by the National Executive Committee." Another national standing rule states, "...each department shall remit the national per capita dues promptly to the National Treasurer via National Headquarters at least monthly."

Units and The American Legion Post

The unit must take the exact same name, number, and location of The American Legion post to which it is attached and are reflected on its charter. If the post to which an Auxiliary unit is attached changes its name or number, it is mandatory the unit take the same action and forward the change to its department secretary/executive director.

The cancellation or revocation of a post charter does not invalidate the charter of its Auxiliary unit. The unit may

continue to operate, bearing the name, location, and number of the post to which it was attached. The number of such post shall not be reassigned so long as the Auxiliary unit continues to be active.

When two or more American Legion posts surrender their charters and consolidate into a new post, the Auxiliary units have options. The unit may continue as a “widow unit” under the original charters where the department adjutant certifies the members, or the unit can choose to surrender the charters for cancellation and consolidate as an Auxiliary unit to the new post. Another option is to surrender the original charter and secure a new charter to a post. The last option is to surrender the charter and disband.

Recommended Unit Operations

For ALA units to manage the operations of their separate entities in compliance with good governance practices of non-profit organizations, there are general practices that each entity should follow:

- Advance preparation of a budget for the next administrative year for review and approval by the governing body.
- Annual membership analysis of expected dues revenue. When developing a budget, units should use a realistic expectation of anticipated members paying their dues.
- Governing body and committee meeting schedules; set standards of reporting and accountability.
- Governing and committee meeting minutes: review, approve, distribute, and retain according to the laws of the unit’s state.
- Distribution of funds should require *two* signatures.
- Handling of cash or checks should be by two unrelated people.
- Independent review of bank, investment, and credit card statements.
- Reserves plan: Develop a plan for reserves to equal three times the annual budgeted amount.
- Cross training of unit responsibilities.
- Confidentiality.

- Preparation and presentation of monthly financial statements: current month to budget; year-to-date budget to the Finance Committee for review; standard of reporting and accountability.
- Preparation and presentation of quarterly financial statements: quarter to budget; year-to-date to budget to Finance Committee and unit members for review and acceptance; standard of reporting and accountability.
- Engagement of an audit firm by the Risk & Compliance Committee: review and acceptance for public disclosure.
- Annual engagement of a tax preparer by the Risk & Compliance Committee and reporting all federal, state, and local compliance requirements fulfilled.

Policies

A policy sets the rules and standards; the process defines what, who, and when the policy will be enforced. The procedure is the *how* and *where* the policy is implemented. Not all these policies will apply to your unit, depending on its size. Check with your state government to see which policies are required for non-profit organizations in your state.

Examples of Policies

- Code of Ethics
- Conflict of Interest and Confidentiality Agreement
- Whistleblower Policy
- Document Retention and Destruction Policy
- Travel and Expense Reimbursement Policy
- Gift and Grant Acceptance Policy
- Review Policy of Audited Financial Statements and Annual Reports
- Endowment Spending Policy
- Fundraising Policy
- Public Scrutiny (Federal) Policy
- Minutes of Governing and Committee Meetings Policy
- Check Signing Policy
- Business Credit Card Policy
- Reserve Funds (Surplus) Policy

- Purchasing Policy
- Emergency Response and Disaster Recovery Policy
- IT Emergency and Disaster Recovery
- Social Media Policy

All policies should be presented to and approved by the unit. Policies should be reviewed annually if there have been changes in federal and state requirements, operations, and programs.

A procedure is a way of accomplishing something. It should be designed as a series of steps to be followed as a consistent and repetitive approach or cycle to accomplish a result. Once complete, you will have a set of established methods for conducting the business of your organization, which can be utilized for training, process auditing, process improvement, or compliance initiatives.

Budgets

Budgets provide for financial stability by setting goals through the annual budget process.

Step-by-Step Instructions:

1. Create a Finance Committee for your unit.
2. Conduct a budget planning meeting of the Finance Committee prior to the start of your fiscal year; make sure to invite unit officers.
3. The agenda should include but is not limited to the following reviews of unit activities:
 - Current financials in comparison to the IRS and nonprofit watchdog organizations' benchmarks. All categories should reflect a percentage. These will change from year to year, dependent upon the activities of the programs or the focus of resources for fundraising. Management and General will always have expenses associated with the general operations of the organization.
 - Program Services (expenditures related to the organization's primary mission and purpose): the target should be 65-75%.

- Management and General Administrative (expenditures spent on managing the operations of the organization): the target should be 5-10%.
 - Fundraising (expenditures spent on raising additional funds for the organization's purpose and mission expenses — i.e., grants, planned giving, endowments, direct mail campaigns, etc.): the target should be 10-20%.
- Progress status toward long-range goals (i.e., fundraising for new building, equipment).
 - Annual ALA obligations: for example, Veterans Affairs & Rehabilitation, poppy promotion, ALA Girls State, etc. These are programs and services.
 - Annual operating expenses (i.e., rent, heat, bank fees, conference registrations, etc.).
 - Membership numbers and the related dues income.
 - Other sources of revenue (donations, events, bequests, etc.).
4. On a 12-month calendar, plot out when you anticipate your revenue and expenditures will occur relative to the activities of the unit.
 5. Compare your total estimated revenue versus your total estimated expenses.
 - Also compare the estimated allocation of these expenses and their overall impact to the mission.
 - Determine what areas need further consideration to accomplish your long-range goals and meet the IRS and nonprofit watchdog organizations expense benchmarks
 6. Try to create a positive bottom line. Remember: Budgets are just a guide. And when change happens or is needed, the unit should have a procedure for how those overages get authorized.

7. Have the Finance Committee vote to approve the budget and forward on to the unit.
8. Have unit membership vote on the adoption of the annual budget.

Privacy Protection for Unit Members

By National Convention resolution, officers and members of the American Legion Auxiliary are not allowed to distribute the names and addresses of any units or members of the Auxiliary, except in carrying out the duties of their offices.

Legal Opinions

All requests for information from The American Legion national judge advocate must come through the department president or department secretary to the ALA National Headquarters executive director.

CHAPTER 4: NON-PROFIT INFORMATION, COMPLIANCE, AND PRACTICES

American Legion Auxiliary units are separate entities that operate independently as affiliates of the ALA National Organization.

All chartered ALA units are permitted by the National Organization to use the name and trademarks of the American Legion Auxiliary and must comply with national legal requirements. As independently operating not-for-profit organizations, units must duly report to their respective state governments and to the federal government.



Note: Check with your state government for laws governing non-profits in your state.

Units that maintain their exempt status by complying with IRS requirements and are in good standing can be tax-exempt under the ALA National Organization Group Exemption ruling or can be tax-exempt in their own right.

Units that have had their tax-exempt status revoked by the Internal Revenue Service (IRS) for failure to file the annual required return for three consecutive years will need to initiate appropriate steps to regain the unit's federal tax-exempt status as well as any state and local exempt statuses.

Unit leaders should be knowledgeable about the following information, which is intended to guide units in understanding their obligations for:

- operating as a tax-exempt nonprofit corporation or tax-exempt unincorporated association permitted to use the name and trademarks of the American Legion Auxiliary;
- federal requirements of filing an annual IRS Form 990 Series and meeting any state and local requirements;

- taking appropriate steps for addressing the IRS's revocation of the tax-exempt status of an ALA unit.

Federal Compliance and Tax Laws

Prior to reporting annually as a not-for-profit and being recognized as a federally tax-exempt organization, a unit will be required to seek formal recognition via IRS Form 1024 or by making a request for inclusion under the American Legion Auxiliary National Group Exemption Ruling. To be included under the ALA National Group Exemption ruling, the unit must be recognized as a 501(c)(19) veterans organization auxiliary.

Public Scrutiny of IRS Tax Documents

Organizations that file IRS Form 990 and 990-EZ must make their annual returns available for public inspection or copying, excluding certain documents that are not available to the public for inspection, such as Schedule B – List of Contributors.

The IRS provides online access to filings of all versions of the IRS Form 990 to charity rating and watchdog organizations, and to the news media following the same public inspection and protection regulations. To view the Exempt Organization Public Disclosure and Availability Requirements, visit www.irs.gov/Charities-&-Non-Profits/Exempt-Organization-Public-Disclosure-and-Availability-Requirements.

This is a summary of the steps to take to conduct business and report annually to the federal government:

- Obtain a Tax Identification Number (TIN)/ Employer Identification Number (EIN).
- Request Inclusion under American Legion Auxiliary Group Exemption ruling (GEN-0964) by submission of a letter and provide IRS verification of TIN/EIN assignment.
- File annually a 990 series of return (see instructions for 990, 990EZ and 990-N).
- File annual requirements at state and local levels.
- Report and annually file 1099s for non-incorporated vendors and service providers.


- Report change of address or responsible party (annually, if applicable).
- When applicable, file all employment tax returns.

Federal Tax Identification Number (TIN)/Employer Identification Number (EIN)

The American Legion Auxiliary Constitution, Bylaws and Standing Rules as adopted, revised, and updated, provides guidance as to the expectation that units will operate as independent, separate entities as affiliates of the ALA National Organization.

If an ALA unit discovers they are currently operating with their American Legion post as one entity, the ALA unit needs to immediately establish separate operations to conduct business. The post has no authority over the unit's finances. The unit can obtain a TIN/EIN by completing and submitting IRS Form SS-4 to the IRS. This form initiates the entity type and structure of the classification as a 501(c)(19) veterans organization auxiliary.

The federal TIN or the federal EIN (both terms are used by the IRS interchangeably) is a unique nine-digit identification number assigned to your organization by completing IRS Form SS-4. Each TIN/EIN assigned is on file with the IRS and should be used on all tax returns and correspondence.

 **NOTE: A copy of the letter confirming the TIN/EIN assignment should be retained permanently in the records of the organization.**

An additional step is required for formal recognition in seeking exemption from federal taxation and the ability to receive tax-deductible donations by choosing to make and seek a unique determination from the IRS by submitting IRS Form 1024 or by requesting inclusion under the ALA National Group Exemption ruling.

How to Obtain a TIN/EIN

Complete and submit an SS-4 to the IRS. The unit can apply for a TIN/EIN via mail, fax, or online by visiting www.IRS.gov

(type SS4 in the search box on the homepage). Once the TIN/EIN is assigned, retain the letter from the IRS as a permanent record.

Request Inclusion Under American Legion Auxiliary Group Exemption Ruling

Compose a letter from the ALA unit to the ALA National Organization requesting formal inclusion to the Group Exemption ruling. A template of the Inclusion Request letter can be obtained by contacting ALA National Headquarters at *compliance@ALAforVeterans.org*. Send a signed copy of the letter together with a copy of the IRS verification letter assigning the new TIN/EIN to the legal name of the unit to:

American Legion Auxiliary National Headquarters
ATTN: Compliance
3450 Founders Road
Indianapolis, IN 46268

Once ALA National Headquarters receives the request, correspondence will then be sent to the IRS from the ALA National Organization (as the “central” or “parent”) on behalf of the ALA unit to be included under the ALA National Group ruling. It typically takes the IRS six to eight weeks to update their records. Most likely there will be no notification from the IRS when the unit has been added to the group ruling roster. Six to eight weeks after submitting the initial inclusion request, please contact the ALA National Headquarters Compliance Team at *compliance@ALAforVeterans.org*. The team will be able to verify if the IRS has included the unit TIN/EIN to the group exemption roster through the IRS Business Master File (www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf).

Nonprofit Organization Classification 501(c)(19)

The American Legion Auxiliary National Organization is classified as a 501(c)(19) veterans organization auxiliary for federal tax-exempt purposes and can receive tax-deductible donations per the Internal Revenue Code (IRC) Title 26 §170(c)(3). In October 1946, the individual ruling letter for the American Legion Auxiliary National Organization was changed

to include the recognition of the subordinate ALA entities as being classified as 501(c)(19) organizations that meet the following criteria:

- Organized in the United States or any of its possessions.
- Seventy-five percent of members are spouses of or within two degrees of kinship related to past or present members who served in the U.S. armed forces.
- No personal inurement (private benefit) is received by an individual.
- Affiliated and organized in accordance with the bylaws and regulations formulated by the parent organization.

See IRS Publication 557 and Publication 3386 for more detailed information.

The IRS affirmed the ALA National Organization's federal tax-exempt status and its ability to receive tax-deductible donations of the group ruling via its IRS Letter of Determination to the American Legion Auxiliary National Secretary dated March 26, 1973.

Tax-Exempt and Deductibility Status Are Not Automatic

An organization can be established as a nonprofit and have the required TIN/EIN but still NOT be tax-exempt or able to receive tax-deductible donations. It is at the discretion of the IRS to grant exemption from paying federal income taxes and the ability to receive tax-deductible donations – this is an entirely separate federal filing and determination process. For ALA entities, the ALA National Organization Group Exemption ruling provides federal tax-exemption and deductibility of donations unless the IRS has specifically revoked an ALA unit's status. See more details about tax-exempt status revocation within this document.

Newly chartered ALA entities that have obtained a TIN/EIN to conduct business and operate can easily seek federal tax-exempt recognition as a 501(c)(19) and the ability to receive tax-deductible donations per IRC § 170(c) by requesting inclusion under the ALA National Group Ruling as already described.

ALA entities also have the option to seek their own unique tax-exempt and deductibility status by completing IRS Form 1024 and paying applicable fees.


ALA Federal Group Exemption Number (GEN) GEN 0964

On Oct. 31, 1946, the IRS granted a group ruling to the American Legion Auxiliary National Organization that allows the inclusion of ALA entities, by request, to be recognized as 501(c)(19) organizations for exemption from federal taxes and with the ability to receive tax-deductible donations, as subordinates of a group exemption ruling.

The IRS does not require separate applications of recognition from each individual subordinate for organizations with like mission and purpose as the ALA National Organization. However, the ALA National Organization does not file an annual group return for those ALA entities that are identified as subordinates to the Group Exemption ruling. *Subordinates of the group ruling are responsible for filing the appropriate 990 series of annual return for their ALA unit.*

The American Legion Auxiliary National Organization's group ruling is identified by the IRS Group Exemption Number (GEN) 0964. When proof of federal tax-exemption or the ability to receive tax-deductible donations is requested, a photocopy of the 1973 IRS Letter of Determination for ALA National Group Exemption ruling is generally sufficient.


ALA units requesting a copy of the IRS Letter of Determination for the ALA National Group Exemption Ruling can contact the American Legion Auxiliary National Headquarters Compliance Team at compliance@ALAforVeterans.org. Verification that the unit is currently included under the Group Exemption ruling and compliant (in good standing) will be confirmed prior to sending a copy of the IRS determination letter.

 **NOTE:** The purpose of the IRS federal group exemption ruling is to exempt the American Legion Auxiliary National Organization and its ALA entities (subordinates) under the ALA's National Group Exemption ruling (GEN 0964) from federal income tax and with the ability to receive tax-deductible contributions.

The Auxiliary at all levels is still subject to other federal taxes such as payroll taxes and tax on unrelated business income. ALA entities may also be subject to certain state and local taxes, including hotel, hospitality, service, and sales taxes. Nonprofit tax requirements differ by state and locality; be sure to consult with a tax adviser knowledgeable about your state's nonprofit tax requirements to determine if nonprofit organizations in your state are afforded any state tax exemptions.

Tax-Deductible Donations and Gifts


Per the IRS Determination Letter for the ALA National Group Ruling, donations and contributions to organizations included under/in the group ruling are tax deductible per Internal Revenue Code Section 170(c)(3).

 **NOTE:** ALA entities that have their own unique determination letter issued from the IRS can verify the deductibility status of donations and contributions via the IRS Business Master file accessible through the IRS website (Column H – Deductibility; coded as 1 = able to receive tax deductible donations; coded as 2 = not able to receive tax-deductible donations) or by calling the IRS Exempt Organization (EO) Division at 1-877-829-5500. If the organization is coded as 2= unable to receive tax deductible donations, verify with the IRS the process for reconsideration. Entities will want to take special care describing the mission and purpose of the organization when completing IRS Form 1024.

ALA Unit Structure: Nonprofit Corporation or Association (Unincorporated)

Incorporation is a legal process used to form a corporate legal entity. A corporation is a separate legal entity from its organizers (members) that has its own rights and obligations and provides legal protection for an organization by limiting the liability of the individual members of the organization. A nonprofit corporation is a special type of corporation that has been organized to meet specific tax-exempt purposes. Incorporation involves jurisdiction (state) specific registration

information and fees. **The American Legion Auxiliary strongly recommends incorporation.**

 **NOTE:** The act of incorporating as a nonprofit corporation does not automatically grant federal tax-exempt status and the ability to receive tax-deductible donations.

A nonprofit association (unincorporated) forms whenever at least two people agree to pursue a common lawful purpose that is not for profit. In general, an association is a group of persons banded together for a specific mission and purpose. Historically, many ALA units were formed with this entity structure and continue in existence. The definition of a nonprofit association can vary under state law, and you should consult the law of the state in which the organization exists. The nonprofit association may be subject to certain legal requirements, even though it has not filed for incorporation under its state's incorporation laws. There may also be multiple state and local registration requirements no different from a similar nonprofit corporation.

State & Local Requirement – Tax and Charity Registration

Federal tax exemption does not automatically grant exemption from state and local taxation. Each state and local municipality has its own tax laws and rulings on tax exemptions, including sales tax. State tax exemptions may only be granted by the state in which your ALA unit is located. Sales tax exemption is only recognized in the state where it is granted.

Most states require a specific nonprofit status tax return form be filed annually. State tax returns for a nonprofit organization may be required to maintain state and local tax-exempt status.

Some states regulate charitable organizations' fundraising activities. States may require an additional annual filing to verify these activities. Be sure to consult with your state's agencies and/or a knowledgeable legal/tax professional in your state to ensure you are meeting all the requirements for filing, and for complying with any state and local charitable regulations. State and local charity compliance may include doing the following:

- Business entity reports – annual and biennial (corporate).
- State tax-exempt annual returns.
- When applicable, state employment returns.
- Renew or update sales tax-exemption certificates.
- Charity registrations, reporting, and licensing. State statutes usually require organizations to register with the state before they solicit or conduct fundraising activities asking the state’s residents for contributions.


Tax-Exempt Status Revocation

The Pension Protection Act of 2006 (Title XII; Subtitle B; Part I Sec. 1223) imposed certain reporting requirements on exempt organizations that did not previously have to file. These requirements were implemented in the 2007 tax year.

Additionally, organizations that do not file the required IRS Form 990 Series for three consecutive years automatically have their federal tax-exempt status and their ability to receive tax-deductible donations revoked.


Consequences of losing your federal tax-exemption may include, but are not limited to, the following:

1. Your ALA unit is no longer exempt from federal income tax, does not have the ability to receive tax-deductible donations, and will be subject to corporate income tax on annual revenue.

 **NOTE:** Your ALA unit should proactively communicate with your donors explaining that the organization’s tax-exempt status has been revoked. You should communicate the reason for the revocation, consequences of the revocation, and that all steps are being taken to have the organization’s tax-exempt status reinstated.

2. State and local tax exemptions, dependent on the organizations’ federal tax-exempt status, may also be revoked. Please consult with the state and local regulatory agencies and/or a tax professional.

3. ALA entities that have had their tax-exempt status revoked are unlikely to be considered for grants.

 **NOTE:** ALA entities that have lost federal (and/or state, local) tax-exempt status may remain chartered entities with the American Legion Auxiliary. The ALA National Organization does not require chartered entities to be tax-exempt.